

STATE OF MICHIGAN
IN THE SUPREME COURT

COUNTY ROAD ASSOCIATION OF MICHIGAN, a
Michigan nonprofit corporation, and CHIPPEWA
COUNTY ROAD COMMISSION, a public body
corporate,

Plaintiffs/Appellants,

v

JOHN M. ENGLER, GOVERNOR OF THE STATE
OF MICHIGAN; GREG ROSINE, DIRECTOR OF
THE MICHIGAN DEPARTMENT OF
TRANSPORTATION, MICHIGAN DEPARTMENT
OF TRANSPORTATION; MICHIGAN
DEPARTMENT OF TRANSPORTATION, DUANE
E. BERGER, DIRECTOR OF THE MICHIGAN
DEPARTMENT OF MANAGEMENT & BUDGET;
MICHIGAN DEPARTMENT OF MANAGEMENT &
BUDGET; DONALD H. GILMORE, STATE
BUDGET DIRECTOR; DOUGLAS B. ROBERTS,
STATE TREASURER; MICHIGAN DEPARTMENT
OF TREASURY; CANDICE S. MILLER,
SECRETARY OF STATE; and MICHIGAN
DEPARTMENT OF STATE,

Defendants/Appellees,

And

MICHIGAN PUBLIC TRANSIT ASSOCIATION,
ANN ARBOR TRANSPORTATION AUTHORITY,
SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION, THE CAPITAL
AREA TRANSPORTATION AUTHORITY,
MICHIGAN ROAD BUILDERS ASSOCIATION and
ASSOCIATED UNDERGROUND
CONTRACTORS,

Intervenors/Appellants,

Supreme Court
Docket No. 125665

COA Docket No. 245767

Trial Court Case No. 02-308-CZ

**SUPPLEMENTAL BRIEF IN
SUPPORT OF APPLICATION
FOR LEAVE TO APPEAL**

**THE APPEAL INVOLVES A
RULING THAT A PROVISION
OF THE CONSTITUTION, A
STATUTE, RULE OR
REGULATION, OR OTHER
STATE GOVERNMENTAL
ACTION IS INVALID**

FILED

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SUPPLEMENTAL BRIEF IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

The State and the Court of Appeals simply ignore the primary rule of construction of constitutional provisions, which is to ascertain the common understanding of the public who adopted the provisions and their intent and purpose as expressed in the provisions at issue. *See, Traverse City School District v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971). Generally, the words used should be given their natural, obvious and ordinary meaning, rather than some technical one. The provisions should be construed as a whole. *See, People v Blachura*, 390 Mich 326; 212 NW2d 192 (1973). The Court should apply to constitutional provisions that meaning which they would convey to the popular mind. *See generally, Advisory Opinion on 1978 PA 426*, 403 Mich 631, 639; 272 NW2d 495 (1978). When provisions might be subject to alternative interpretations, their intent may be gleaned from the circumstances under which they were written and they may be construed in light of their history, purpose and surrounding circumstances. *See, Committee for Constitutional Reform v Secretary of State*, 425 Mich 336, 340; 389 NW2d 430 (1986), *Traverse City School District, supra*.

DISCUSSION

The State argues that Const 1963, art 9, § 9 does not dedicate any general sales taxes. The State relies, in part, on the alleged “limiting language” found in the first two paragraphs of Const 1963, art 9, § 9. The first paragraph provides that all specific taxes shall be used exclusively for “transportation purposes” as set forth in the remainder of Const 1963, art 9, § 9, and excludes “general sales taxes and use taxes and regulatory fees.” Nothing about “comprehensive transportation purposes” is mentioned in this paragraph. The second paragraph relates to the dedication of specific taxes to the “transportation purposes” delineated therein and also contains the same exclusions as the first paragraph. Again, comprehensive transportation is not mentioned in the second paragraph of Const 1963, art 9, § 9. The first two clauses of the

third paragraph deal with specific taxes and the third clause deals with general sales taxes, all of which are modified by the phrase “shall be used exclusively for the transportation purposes of comprehensive transportation as defined by law.” *See*, Const 1963, art 9, § 9. This is the only paragraph that mentions “comprehensive transportation purposes” as opposed to “transportation purposes.” There is nothing inconsistent among the three paragraphs of Const 1963, art 9, § 9. Yet, the State claims that there is “no reasonable interpretation of art 9, § 9 that could mandate that some portion of the general sales tax revenue be dedicated to comprehensive transportation.” State’s Response Brief, p 10.

The Court of Appeals concluded that the statement in the first paragraph of Const 1963, art 9, § 9 exempting “*all* general sales taxes from the restrictions imposed on specifics taxes” was inconsistent with the statement in the third paragraph that “simultaneously subjects *up to twenty-five percent* of the general sales taxes to the very same restrictions,” thus rendering Const 1963, art 9, § 9 “ambiguous.” *County Road Ass’n v Governor*, 260 Mich App 299, 306; 677 NW2d 340 (2004). The Court of Appeals is plainly incorrect as explained above. The first paragraph of Const 1963, art 9, § 9 refers only to general “transportation purposes” and says nothing about “comprehensive transportation purposes.” Paragraph two also relates only to general “transportation purposes.” Only the third paragraph contains the specific reference to “comprehensive transportation purposes.” Therefore, the general mandate in the first paragraph neither limits nor is it inconsistent with the specific mandate of the third paragraph of art 9, § 9.

More importantly, the decision of the Court of Appeals and the position of the State are completely contrary to the tenets of constitutional construction cited above. As set forth in detail in Intervenor’s Application for Leave to Appeal, it is clear that the people of this state, who adopted the amendments to Const 1963, art 9, § 9 in 1978, understood that up to 25% of general

sales taxes would be used exclusively for “other transportation purposes” and that such funds would therefore be constitutionally dedicated. At the November 1978 election, the voters were asked to ratify or reject the proposed constitutional amendment. The descriptive statement below, given all voters pursuant to 1954 PA 116, clearly provided the electorate with a description of the proposed amendment by articulating the elements and conditions of the proposed amendment. In this context, the voters plainly and unambiguously understood that (1) at least 90% of the gas and license tax revenues would be used “exclusively” for general road purposes, and (2) the remainder of the gas and license revenues, not to exceed 25% of sales tax on cars and parts, would be used “exclusively” for “other transportation purposes.” The following is the official ballot wording (emphasis added):

PROPOSAL M

PROPOSAL TO ALLOCATE AT LEAST 90% OF GAS TAX REVENUES FOR GENERAL ROAD PURPOSES AND THE REMAINDER FOR OTHER TRANSPORTATION PURPOSES AND TO REPLACE STATE HIGHWAY COMMISSION WITH A TRANSPORTATION COMMISSION

THE PROPOSED AMENDMENT WOULD:

1. **Provide that at least 90% of gas and license tax revenue be used exclusively for general road purposes**
2. Provide that remainder of gas and license tax revenue and not to exceed 25% of sales tax on cars and parts be used exclusively for other transportation purposes.
3. Limit bonding for roads, streets, bridges and other transportation purposes to amounts to be derived from specific motor vehicle tax and sales tax revenues.
4. Replace State Highway Commission with a nonpartisan State Transportation Commission which shall establish a state transportation policy.

Should this amendment be adopted?

YES ☐

NO ☐

The people of this State approved the amendment to Const 1963, art 9, § 9. Neither the Court of Appeals nor the State address what the understanding of the people of this state was when they approved Proposal M. Nothing is more critical to this question of constitutional interpretation, yet both the Court below and the State essentially ignored this issue.

The 1978 amendment to Const 1963, art 9, § 9 basically: (1) reestablished that at least 90% of specific fuel taxes would be used for “highway” (as opposed to broader “transportation” purposes); (2) dedicated 100% of aviation fuel tax revenues to transportation purposes and (3)

allowed the Legislature to dedicate portions of the specific fuel taxes (less than 10%) and of motor vehicle sales taxes revenues (not more than 25%) exclusively to “other transportation” purposes. Since the main purpose of Const 1963, art 9, § 9 was to dedicate the revenues subject to its provisions to specific purposes, it is inconceivable that the electorate understood that the 1978 amendment was intended to withhold from the Legislature the authority to dedicate any motor vehicles sales tax revenues exclusively to “other transportation” purposes.

Motor vehicle and motor vehicle parts sales tax revenues are one of the three subjects (*i.e.*, balance of specific fuel taxes, aviation taxes and motor vehicle sales taxes) in the third paragraph of amended art 9, § 9. The State expressly acknowledged that this paragraph constitutionally dedicates “three things” exclusively to comprehensive transportation purposes. The State argued, however, and the Court of Appeals essentially agreed, that the third “thing” is really nothing (*i.e.*, 0%). Clearly, the voters would not have understood that this third subject was included in the sentence for the purpose of saying that nothing was being dedicated by it to “other transportation” purposes.

The State argued, and the Court of Appeals essentially agreed, that because Const 1963, art 9, § 9 places an upper limit on the amount that the Legislature may allocate from the general sales tax to the Comprehensive Transportation Fund (“CTF”), somehow the funds lose their standing as “constitutionally dedicated for a specific purpose.” As discussed below, however, despite the “upper limit,” each source of funding set forth in Const 1963, art 9, § 9 is constitutionally dedicated, and thus none are subject to the Governor’s powers under Const 1963, art 5, § 20.

As with motor vehicle and motor vehicle parts sales tax revenues, legislative action is required to dedicate any specific fuel taxes to comprehensive transportation purposes. Yet,

neither the State nor the Court of Appeals below claimed that the Constitution dedicates 0% of such specific fuel taxes to comprehensive transportation purposes. Rather, the State admitted that the amounts determined by the Legislature (up to 10%) are so dedicated. To read the exact same sentence as intending the opposite result for motor vehicle and motor vehicle parts sales taxes is erroneous. Rather, the inclusion of motor vehicle and motor vehicle parts sales taxes in the same paragraph that constitutionally dedicates the two other items to comprehensive transportation purposes clearly demonstrates that all three items were so dedicated.

The Court of Appeals' holding flies directly in the face of the sole purpose of the constitutional provisions relating to transportation and comprehensive transportation as it has developed over the last 65 years. It ignores that, in the context of appropriation reductions pursuant to Const 1963, art 5, § 20, Const 1963, art 9, § 9 uses the exact same language as every other constitutional provision dedicating funds for specific purposes. The Court of Appeals' interpretation of Const 1963, art 9, § 9, as essentially having the sole purpose of placing an upper limit on the amount of sales tax revenues that can be apportioned to transportation purposes, is strained at best.¹

All provisions of Const 1963, art 9, § 9 require some legislation before any funds are subject to their provisions. If the Legislature does not enact (or repeals) the specific fuel and motor vehicles taxes, there are no funds for Const 1963, art 9, § 9 to mandate be used for exclusively highway purposes. The delegates to the Constitutional Convention clearly understood, and agreed with the proposition, that it was the Legislature's decision whether to

¹ The reference to "less than 25%" in Const 1963, art 9, § 9, makes its treatment of motor vehicle sales tax revenues consistent with the then (1978) existing statutory distribution of sales tax revenues. Pursuant to MCL 205.75(1), as amended by 1978 PA 429, 15% of sales tax revenues went to local units of government and 60% was transferred to the school aid fund. The balance (25%) was the upper limit incorporated into Const 1963, art 9, § 9.

increase, maintain, decrease or eliminate the funding to be used exclusively for highway purposes. The mere fact that legislation is required to create the funds encompassed by Const 1963, art 9, § 9 does not contradict Const 1963, art 9, § 9's requirement that the funds so created must be used exclusively for highway or transportation purposes. In fact, that the Legislature has the power to change the amounts to be dedicated to specific purposes by Const 1963, art 9, § 9 was an integral desirable feature of the provision, not one which automatically removed the tax revenues from its scope.

In the same vein, Const 1963, art 9, § 9 does not require that any portion (*e.g.*, minimum percentage or amount) of the specific fuel taxes be used for comprehensive transportation purposes. It is the Legislature's prerogative (subject to the maximum percentage limit in Const 1963, art 9, § 9) to determine the amount, if any, of specific fuel taxes and motor vehicle sales taxes to be allocated exclusively to the CTF. The need for some legislative action to establish the amounts to be allocated and/or apportioned to the CTF is no basis for concluding that Const 1963, art 9, § 9 does not dedicate such legislatively established amounts to that specific purpose.

This construction of Const 1963, art 9, § 9 is supported by the language of Const 1963, art 9, § 11. In addition to providing that certain sales tax revenues shall be dedicated to the state school aid fund, Const 1963, art 9, § 11 provides that “. . . any other tax revenues provided by law, shall be dedicated to this fund.” Clearly the only purpose of this language is to allow the Legislature to dedicate revenues to this fund, thereby “constitutionally dedicating” such revenues to a specific purpose so as to remove them from the Governor's power to reduce appropriations.

Based on the plain language of Const 1963, art 9, § 9, and the intention of the people who adopted the amendments to this provision, all of the funds identified in the third paragraph of

Const 1963, art 9, § 9 are constitutionally dedicated. The decision of the Court of Appeals is clearly erroneous and should be reversed by this Court.


CONCLUSION

For the reasons set forth above, Intervenor respectfully request that this Honorable Court grant the Intervenor/Appellants' Application for Leave to Appeal and reverse the decision of the Court of Appeals.

Respectfully submitted,

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